IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.12.2004

CORAM

THE HONOURABLE MR. MARKANDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR. JUSTICE N.V.BALASUBRAMANIAN

Writ Appeal Nos.2205, 2503 of 2004 and
Writ Petition No.14567 of 2004 and
WAMP NO.4088 OF 2004 and 4597 of 2004
and WPMP 17268 of 2004

Writ Appeal No.2205 of 2004
and
Writ Petition No.14567 of 2004:

1. D. Maheswara Raju
2. D.Ramakrishnan
3. D. Kannappan
4. S.Velayutham
5. C.R.Manavalan
6. K.M.Kannan
7. R.Solairaj
8. V.Santhanam
9. G.Suresh
10. Mohammed Hasim
11. M. Babu Moses
12. B. Ramakrishnan .. Appellants in the writ appeal/ petitioners 1 to 5 and 7 to 12 in WP

versus

1. The Commissioner,
   Corporation of Chennai,
   Rippon Buildings,
   Chennai - 600 003.

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2. The Assistant Commissioner,(GAP)
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003. .. Respondents in both the writ appeal and the writ petition/Respondents

Writ Appeal No.2503 of 2004:

1. The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai - 600 003.

2. The Assistant Commissioner
(GAP)
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003. .. Appellants/Respondents

versus

1. D. Maheswara Raju
2. D. Ramakrishnan
3. D. Kannappan
4. S. Velayutham
5. C.R.Manavalan
6. R. Solairaj
7. V.Santhanam
8. G. Suresh
9. Mohamed Hasim
10. M. Babu Moses
11. B.Ramakrishnan .. Respondents/Petitioners

Prayer: W.P.No.14567 of 2004: The writ petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus to call for the records of the first respondent in his memorandum having reference No.G.D.C. No.E4/52652/2003 dated 19.5.2004 and quash the same and consequently direct the respondents to include the names of the petitioners in the panel for the year 2002-2003 or the subsequent panels for the promotion to the post of Assessors in the Revenue Department Service of the Corporation of Chennai above their juniors in the post of Licence Inspectors and promote the petitioners to the post of Assessors in the Corporation of Chennai.

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Writ Appeal No.2205 of 2004: Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in Writ Petition No.35718 of 2003 dated 23.4.2004.

Writ Appeal No.2503 of 2004: Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.M.P.No.17268 of 2004 in W.P.No.14567 of 2004 dated 25.5.2004.

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for appellants in
W.A.No.2205 of 2004,
petitioners in
W.P.No.14567 of 2004
& Respondents in : Mrs. Nalini Chidambaram,
W.A.No.2503 of 2004 Senior Counsel
for M/s. Gladys Daniel

for respondents in
W.A.No.2205 of 2004 &
W.P.No.14567 of 2004&
appellants in
W.A.No.2503 of 2004 : Mrs. P. Baghyalakshmi

JUDGMENT

(Judgment of the Court was delivered by
The Honourable the Chief Justice)

Writ Appeal No.2205 of 2004 has been filed against the impugned judgment of the learned single Judge dated 23.4.2004 passed in Writ Petition No.35718 of 2003 and Writ Appeal No.2503 of 2004 has been filed against the interim order passed by the learned single Judge in W.P.M.P.No.17268 of 2004 in W.P.No.14567 of 2004 dated 25.5.2004.

2. We have heard the learned counsel for the parties and have perused the impugned orders and other papers on record.

3. In Writ Petition No.35718 of 2003 the learned single Judge has permitted the writ petitioners to file a representation to the first respondent and directed that the same should be decided on merits. We see no reason to interfere with the aforesaid direction. We are informed that the writ petitioners have filed a representation to the first respondent and the same has been rejected.

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4. Be that as it may, we wish to lay down the law as regards the qualification and eligibility for promotion to the post of Assessor in the Corporation of Chennai. The writ petitioners were initially appointed as Tax Collectors and subsequently promoted to the post of Licence Inspectors in the year 1988. Now they wish to be promoted as Assessors. Certain draft by-laws have been framed by the Corporation of Chennai in the year 1981, but admittedly they have not received the sanction of the State Government. Section 352 (1) of the Chennai City Municipal Corporation Act 1919 (hereinafter referred to as the `Act') states as follows:

> " S.352. Confirmation of by-laws by State Government:
> (1) No by-law made by the council under this Act shall have any validity unless and until it is sanctioned by the State Government."

5. A perusal of Section 352 (1) of the Act shows that the language therein is categorical. No by-law made by the council has any validity whatsoever unless and until it is sanctioned by the State Government. Hence the draft by-laws framed by the Corporation of Chennai have to be totally ignored unless and until the State Government sanctions the same. Since admittedly the State Government has not sanctioned the said draft by-laws we have to totally ignore the same. It is only like a Bill which has been moved in the Parliament, but which does not become law unless and until it is passed by both the Houses of Parliament and received the assent of the President.

6. It is well settled that when statutory rules are silent, the gap can be filled in by Executive Instructions.

7. In Union of India vs. K.P. Joseph (AIR 1973 SC 303), the Supreme Court observed in paragraph 9 as follows:

> " Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma vs. State of Rajasthan ((1968) 1 SCR 111 = (AIR 1967 SC 1910) that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Art. 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

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8. In J. & K. Public Service Commission etc. vs. Dr. Narinder Mohan and others (AIR 1994 SC 1808), the Supreme Court again observed that Executive Instructions can fill in the gaps in the statutory law. Similar view has been taken in large number of decisions.

9. Since there is no statutory rule governing the field on the legal subject with which we are concerned, the gap has obviously to be filled in by the Executive Instructions, which in this case is the Madras Corporation Code 1941.

Rule 1015 of the Madras Corporation Code reads as follows:

" Educational and technical qualifications:-

> The following are the educational and other qualifications prescribed by the Standing Committees concerned for the posts in the various departments. Exemptions from these qualifications will be granted by the Council in special deserving cases on the recommendation of the Commissioner and the Standing Committee concerned."

In the same Code, subsequent to Rule 1015 it is mentioned that for appointment as an Assessor the requisite qualification is passing Account Test.

10. Mrs. P.Baghyalakshmi, learned counsel for the Chennai Corporation has submitted that a resolution has been passed by the Chennai Corporation that apart from passing the Account Test a candidate seeking appointment as an Assessor should have also passed the Account Test for Subordinate Officers Part I & II as it is prescribed in the draft by-laws which were made in the year 1981. Since we have already observed that the draft by-laws have no legal force at all in view of Section 352 of the Act, we are of the opinion that the Chennai Corporation cannot insist that a candidate seeking appointment as an Assessor must have passed the Account Test for Subordinate Officers Part I & II. All that is required for appointment as an Assessor is passing the Account Test as mentioned in the Madras Corporation Code. As regards the second sentence of Rule 1015, in our opinion, this only permits exemptions to be granted by the Council in special deserving cases on the recommendation of the Commissioner and the Standing Committee concerned. This would mean that in exceptional and special deserving cases even the Account Test which is the requisite qualification prescribed in the Code can be dispensed with. The second sentence of Rule 1015 cannot be treated to mean that an additional qualification apart from passing the Account Test can be prescribed by the Chennai Corporation.

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11. Mrs. P. Bagyalakshmi, learned counsel for the Chennai Corporation relied on the decision of the Supreme Court in Delhi Judicial Services Association and others vs. Delhi High Court ((2001 (5) SCC 145)), in which, a direction was given by the Supreme Court to the High Court to go ahead with the selection process from amongst the members of the Delhi Judicial Service in the light of the draft rules in anticipation of sanction.

12. We have already held in The Secretary. Saliar Mahajana Hr. Sec. School, Aruppukottai vs. G. Subburaj and others (Writ Appeal No. 3953 of 2004 dated 16.12.2004) that a mere direction by the Supreme Court without laying down any principle of law is not a precedent. The case law on the point has already been discussed in the aforesaid decision and we need not repeat the same. Hence the mere direction of the Supreme Court in Delhi Judicial Services Association vs. Delhi High Court ((2001) 5 SCC 145) cited supra, in our opinion, does not amount to a precedent as it does not lay down any principle of law. As already observed above, the language of Section 352 of the Act is categorical and it clearly states that no draft by-law will be valid unless and until it is sanctioned by the State Government. Hence the Corporation of Chennai cannot get any benefit from the decision of the Supreme Court in Delhi Judicial Service Association vs. Delhi High Court cited supra.

13. Mrs. P. Baghyalakshmi, learned counsel for the Chennai Corporation then submitted that we should give a direction to the State Government to sanction the draft by-laws under Section 352 of the Act. We have already held in Rama. Muthuramalingam vs. The Deputy Superintendent of Police, Mannargudi (2004 (5) CTC 554) that the Judiciary must exercise self restraint. Granting sanction under Section 352 of the Act is a purely Executive function and it will be wholly improper for the Judiciary to encroach into the domain of the Executive. Judges must exercise self restraint and must not take over the functions of the Executive or the Legislature as that alone will maintain their prestige and esteem. Under our Constitution the three separate wings of the State viz. the Legislature, the Executive and the Judiciary have their own functions to perform and it is wholly improper for the Judiciary to encroach into the domain of the Executive or the Legislature.

14. For the reason given above, we hold that passing Account Test is sufficient qualification for the writ petitioners for being considered for promotion to the post of Assessors.

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15. We make it clear that we are not directing that the writ petitioners should automatically be promoted as Assessors. We are only holding that they are eligible to be considered for promotion as they have the necessary qualification for the post of Assessors. However the actual promotion will be done in accordance with the relevant criteria for promotion as Assessors. The writ appeals are disposed off accordingly. The writ petition is also disposed off. No costs. Connected miscellaneous petitions are closed.

Vu

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2. The Assistant Commissioner,(GAP)
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

1 cc to Mr.Gladys Daniel, Advocate Sr.No.55481
1 cc to Mrs.P.Bagyalakshmi, Advocate sr.No.55488

W.A.Nos.2205 & 2503 of 2004 and W.P.No.14567 of 2004

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